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### Wren Thomas v. Chevron U.S.A. United States Court of Appeals, Fifth Circuit 832 F.3d 586 (Filed August 11, 2016)

James Kalcheim, Class of 2019

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## VESSEL OWNER FACES POTENTIAL LIABILITY FOR ALLEGED FAILURE TO PROTECT SUPPLY VESSEL CAPTAIN FROM PIRATE ATTACK

*Wren Thomas v. Chevron U.S.A.*  
United States Court of Appeals, Fifth Circuit  
832 F.3d 586  
(Filed August 11, 2016)

**The United States Court of Appeals for the Fifth Circuit vacated, reversed, and remanded this case back to the Texas District Court, which had granted Chevron's motion for summary judgment after denying plaintiff's motion for leave to amend. The Fifth Circuit found the District Court erred in denying plaintiff's motion to amend and that plaintiff could proceed with his claims under general maritime and common law.**

Plaintiff-Appellant Wren Thomas ("Thomas") filed suit in Texas state court under the Jones Act against Defendant-Appellee Chevron U.S.A. ("Chevron") for injuries he sustained during his capture and 18-day detainment by West African pirates in 2013.<sup>1</sup>

Thomas was the captain of a *C-Retriever* supply vessel owned by his primary employer, Edison Chouest Offshore, LLC ("Edison"), which supported Chevron's platform operations off the coast of Nigeria.<sup>2</sup> In his original complaint, Thomas alleged that he told both Edison and Chevron that he feared his vessel was particularly susceptible to pirate attacks given its age, lack of speed, and use of VHF radio to communicate its location.<sup>3</sup> After receiving threats from pirates in the spring of 2013, he asked Edison for a transfer, which was never given.<sup>4</sup>

In the fall of 2013, pirates threatened Edison's vessels at which point Edison advised its captains, including Thomas, to "stay very vigilant." Four days later, Edison assigned the *C-Retriever* to make a run through what Thomas described as "pirate-infested waters."<sup>5</sup> During that run, on October 22, 2013, pirates attacked Thomas' vessel off the coast of Nigeria. After surrendering, he was detained for 18 days at various "holding camps" where he states that he was malnourished and tortured. After being released, he maintains that he has suffered from PTSD, sleep disorders, and other medical problems.<sup>6</sup>

After Thomas filed suit in Texas state court seeking relief under the Jones Act, Chevron removed to United States District for the Southern District of Texas and filed a motion to dismiss under Rule 12(b)(6).<sup>7</sup> After the District Court converted Chevron's motion to dismiss to a motion for summary judgment, Thomas filed a supplemental brief requesting leave to amend his complaint and reclassify his Jones Act claims as "general maritime law and negligence claims."<sup>8</sup> The District court denied the motion believing such amendment would be "futile" as the

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<sup>1</sup> *Thomas v. Chevron U.S.A., Inc.*, 832 F.3d 586, 588 (5th Cir. 2016).

<sup>2</sup> *Id.* at 588.

<sup>3</sup> *Id.* at 589.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 590.

proposed revised claims would “fail as a matter of law.”<sup>9</sup> The District court subsequently granted Chevron’s motion for summary judgment.<sup>10</sup>

On appeal, the Fifth Circuit reversed holding that the lower court abused its discretion granted leave to amend and that his amended complaint could proceed on remand. Applying a *de novo* standard of review to the case, the Fifth Circuit concluded that Thomas “provided a plausible basis for liability, noting that Chevron owed duties and obligations under maritime and general common law.” The Fifth Circuit stated the “allegations are sufficient to suggest that the harm suffered by Thomas was reasonably foreseeable to Chevron and that Chevron consequently owed him a duty not to subject him to the conditions he encountered on his October 22, 2013 voyage . . . and Thomas’s claim for relief is plausible on its face.”<sup>11</sup>

Accordingly, the Fifth Circuit reversed the court's ruling on Thomas's motion for leave to amend, and the remanded the case for further proceedings.

**James Kalcheim**  
**Class of 2019**

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 593.